THE GAS COMPANIES ACT, 1863.

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BOMBAY ACT No. V OF 1863.[1]

[THE GAS COMPANIES ACT, 1863.][1]

[*12th May 1863.*]

Repealed in part by Bom. 3 of 1886.
" " " " " 13 of 1950.
Amended by Act 16 of 1895.
Adapted and modified by the Adaptation of Indian Laws Order in Council.
Amended by Bom. 17 of 1945.*
Adapted and modified by the Adaptation of Laws Order, 1950.

An Act to confer certain powers on the Bombay Gas Company Limited ; and to enable Government to confer similar powers on other Companies registered and incorporated for the purpose of manufacturing and supplying gas.

WHEREAS a joint Stock Company has been lately formed for the purpose of introducing gas-works into the Presidency of Bombay, which Company has been completely registered in England under the Joint Stock Companies Acts, 1856 and 1857, with limited liability, and has duly obtained a certificate of incorporation under the name of " The Bombay Gas Company Limited " : **Preamble.**

19 & 20 Vict., c. 47.
20 & 21 Vict., c. 14.

and whereas the said Company is about to erect gas-works in the [2][Greater Bombay], and is engaged in the preparation of apparatus and materials for the manufacture and supply of gas, and also in the business of gas fitters in the Presidency of Bombay :

and whereas it is expedient that powers and facilities should be given to the said Company to enable them to carry out their undertaking of lighting with gas the [2][Greater Bombay] ; which powers and facilities may hereafter be extended to the operations of the said Company in other towns and places within or subject to the Presidency of Bombay, and to other Companies which are or may hereafter be registered and incorporated for the purpose of manufacturing and supplying gas ;

It is enacted as follows :—

Power to break up streets, etc., under superintendence, and to open drains.

1. In the [2][Greater Bombay] and in any other town or place to which the provisions of this Act may hereafter be extended, by an order or orders or permission of the [3][[4][State] Government], the Bombay Gas Company Limited, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges, and may open and break up any sewers, drains or tunnels within or under such streets and bridges, and lay down and place within the same limits, pipes, conduits, service-pipes and other works, and from time to time repair, alter or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste-liquids which may arise in the making of the gas ; and, for the purposes aforesaid, may remove and use all earth and materials in and under such streets and bridges ;

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[1] For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1863, Supplement, p. 199 ; for Report of the Select Committee, *see ibid*, p. 255, and for Proceedings in Council, *ibid*, pp. 193 and 291.
The short title was given by the Bombay Short Titles Act, 1921 (Bom. 2 of 1921).
[2] These words were substituted for the original words by Bom. 17 of 1945, s. 9, Sch. E read with Bom. 52 of 1947, s. 2, proviso.
[3] The words " Provincial Government " were substituted for the words " Governor in Council " by the Adaptation of Indian Laws Order in Council.
[4] This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.
*This Act was re-enacted and the amendments made by section 9 and Schedule E of the said Act have been continued in force by Bom. 52 of 1947, s. 2.

and the Company may in and on such streets and bridges erect any pillars, lamps and other works, and do all other acts which the said Company shall from time to time deem necessary for supplying gas to the inhabitants of the said [1][Greater Bombay], or other town or place as aforesaid, doing as little damage as may be in the execution of the powers hereby granted, and making compensation for any damage which may be done in the execution of such powers.

Not to enter on private and without consent.

2. Provided always that nothing herein shall authorize or empower the said Company to lay down or place any pipe or other works into, through or against any building or in any land not dedicated to public use, without the consent of the owners and occupiers thereof, except that the said Company may at any time enter upon and lay or place any new pipe in the place of any existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this Act, and may repair or alter any pipe so laid down.

Notice to be served on persons having control, etc., before breaking up streets or opening drains.

3. Before the said Company proceed to open or break up any street, bridge, sewer, drain or tunnel, they shall give to the municipal commissioners for the [1][City of Bombay, the local authority concerned] or other persons under whose control or management the same may be, or to their clerk, surveyor or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work; except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the works, or the necessity for the same shall have arisen.

Streets or drains not to be broken up except under superintendence of persons having control of same.

4. No such street, bridge, sewer, drain or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officers, and according to such plan as shall be approved of by such persons, or their officers, or in case of any difference respecting such plan, then according to such plan as shall be determined by a Magistrate; and a Magistrate may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the said Company to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain:

If persons having control, etc., fail to superintend, Company may proceed.

Provided always that, if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain or tunnel, after having had such notice of the said Company's intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintendent the operation, the said Company may perform the work specified in such notice without the superintendence of such persons or their officer.

Streets broken up to be re-instated without delay.

5. When the said Company open or break up the road or pavement of any street or bridge, or any sewer, drain or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby; and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient

[1] These words were substituted for the original words by Bom. 17 of 1945, s. 9, Sch. E, read with Bom. 52 of 1947, s. 2, proviso.

for the warning of passengers, to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up; and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same.

Penalty for opening or breaking up street without notice, etc.,

6. If the said Company open or break up any street or bridge, or any sewer, drain or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the said Company are hereby authorized to perform such works without any superintendence or notice; or

delay in reinstating streets, etc.,

if the said Company make any delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby; or

neglect to fence and light, etc.

if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same shall have been made good,

they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain or tunnel in respect of which such default is made, a sum not exceeding fifty rupees for every such offence, and they shall forfeit an additional sum not exceeding fifty rupees for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay, persons concerned may reinstate and recover expenses. Expense how ascertained and recovered.

7. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the said Company; and the amount of such expense shall in case of any dispute about the same be ascertained and recovered [1][in the Greater Bombay] and in any other town or place subject to the jurisdiction of [2][The High Court of Judicature at Bombay] in the manner in which expenses are ascertained and recovered [3][in municipalities under the law for the time being in force] and, in any town or place not within the jurisdiction of [2][The High Court of Judicature at Bombay] in the same manner as damages are recoverable under this Act.

Power to enter buildings for ascertaining quantity of gas consumed.

8. The clerk, engineer or other officer duly appointed for the purpose by the said Company may at all reasonable times enter any buildings, or place, lighted with gas supplied by the said Company, in order to inspect the meters, fittings and works for regulating the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied;

Penalty for hindering.

and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid, at any reasonable time, he shall, for every such offence, forfeit to the said Company a sum not exceeding fifty rupees.

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[1] These words were substituted for the original words by Bom. 17 of 1945, s 9, Sch. E, read with Bom. 52 of 1947, s. 2 proviso.

[2] These words were substituted for the original words by the Adaptation of Laws Order, 1950.

[3] These words were substituted for the words and figures "under Act 14 of 1856" by the Amending Act, 1895 (16 of 1895).

9. [*Recovery of rents due for gas.*] *Rep. by Bom. 13 of 1950, s. 8.*

10. [*Power to remove pipes when supply of gas discontinued.*] *Rep. by Bom. 13 of 1950, s. 8.*

Meters, etc., not liable to distrant for rent.

11. Any pipe, meter, fitting or other work let for hire by the said Company shall not be subject to distress for rent or revenue, or any rate or tax due upon the premises where the same may be used, nor be taken in execution under any process of any Court whatsoever, or in or under any proceeding in bankruptcy or insolvency, against the person in whose possession or power the same may be.

Penalty for fraudulentl using gas.

12. Every person who shall lay, or cause to be laid, any pipe to communicate with, or who shall derive gas directly or indirectly from, any pipe belonging to the said Company, without their consent, or

who shall fraudulently injure or tamper with any such pipe, meter, fitting or other work as aforesaid, or

who, in case the gas supplied by the said Company is not ascertained by meter shall use any burner other than such as has been provided or approved of by the said Company, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or shall otherwise improperly use or burn the gas, or shall supply any other person with any part of the gas supplied to him by the said Company,

shall, in addition to the amount firstly due to the Company for gas supplied, forfeit to the said Company the sum of fifty rupees for every such offence and also the sum of twenty rupees for every day every suchoffence shall have been continued or repeated. and the said Company may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into, and shall not be liable to any action or suit for so doing.

Penalty for wilfully damaging pipe.

13. Every person who shall wilfully remove, destroy or damage any pipe, pillar, post, plug, lamp, or other work of the said Company for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the said Company, shall for each such offence forfeit to the said Company any sum not exceeding fifty rupees in addition to the amount of the damage done.

Satisfaction for accidentally damaging pipe.

14. Every person who shall carelessly or accidentally break, throw down or damage any pipe, pillar or lamp belonging to the said Company or under their control shall pay to the Company such sum of money by way of satisfaction, not exceeding the amount of the damage done, as any Magistrate shall think reasonable.

Penalty for causing water to be corrupted.

15. If the said Company shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas, whereby the water in any such stream, reservoir aqueduct, pond or place for water shall be fouled, the said Company shall forfeit for every such offence a sum not exceeding one thousand rupees.

Daily penalty during continuance of offence.

And they shall forfeit an additional sum not exceeding five hundred rupees for each day during which such washing or other substance shall be brought or shall flow, or the act by which such water shall be fouled shall continue after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the said Company by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby.

Daily penalty during escape of gas after notice.

16. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the said Company, they shall immediately after receiving notice thereof in writing prevent such gas from escaping, and in case the said Company shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall, for every such offence, forfeit the sum of fifty rupees for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice.

Penalty if water be fouled by gas.

17. Whenever any water shall be fouled by the gas of the said Company, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding five hundred rupees, and a further sum not exceeding one hundred rupees for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Power to examine gas pipes to ascertain cause of water being fouled.

18. For the purpose of ascertaining whether such water be fouled by the gas of the said Company, the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits and works of the said Company: provided that such person before proceeding so to dig and examine shall give twenty-four hours' notice in writing to the said Company of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement or place where such digging is to take place, and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay, or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the said Company for the purpose of laying their pipes, and provided further that the officers or other persons acting on behalf of the Company may be present at such digging and examination as aforesaid.

Expenses by whom to be borne.

19. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the said Company, the expenses of the digging, examination and repair of the street or place disturbed in any such examination shall be paid by the said Company, but, if upon such examination, it appear that the water has not been fouled by the gas of the said Company, the person causing such examination to be made shall pay all such expenses, and shall also make good to the said Company any injury which may be occasioned to their works by such examination.

Expenses how ascertained.

20. The amount of the expenses of every such examination and repair and of any injury done to the said Company shall, in case of any dispute about the same,

together with the costs of ascertaining and recovering the same, be ascertained and recovered in the manner prescribed for the ascertainment and recovery of expenses in section 7 * * * *[1].

Liability to indictment for nuisance.

21. Nothing in this Act contained shall prevent the said Company from being liable to an indictment for nuisance, or to any other legal proceedings to which they may be liable, in consequence of making or supplying gas.

Copies of memorandum and articles of association and of regulations, etc., to be kept for inspection—

22. Copies of the memorandum and articles of association of the said Company and of every other instrument registered under the said "Joint Stock Companies Acts, 1856 and 1857", as constituting the regulations of the said Company, and a copy of every special resolution of a general meeting whereby any change shall have been, or at any time shall be made in the regulations of the said Company, shall be kept at the office of the said Company [2][in the Greater Bombay], and shall there be open to the inspection of all persons during the usual hours of business of the said office; 19 & 20 Vict., c. 47, 20 & 21 Vict., c. 14.

at office of Company in Bombay,

and copies of such memorandum and articles of association and of every other such instrument, and of every special resolution as aforesaid, shall also be deposited by the said Company as soon as it can be done after the passing of this Act, or after the making of any such special resolution hereafter to be made, in the Bombay

in Secretariat, and office of Registrar of Joint Stock Companies.

Secretariat and also in the office of the Registrar of Joint Stock Companies, or, if there be no such officer, in the office of the person having the custody of the records of the High Court of Judicature at Bombay, and shall there be filed;

Copy to be evidence.

and an examined copy of any such filed copy as aforesaid, certified by and under the hand of the Registrar of Joint Stock Companies, or of the person having the custody of the records of the said High Court, shall be good and sufficient evidence of such memorandum or articles of association, instrument or special resolution, in all actions, suits and proceedings whatsoever, whether civil or criminal, to be had in any court of justice, whether established by Royal Charter or not, or before any Magistrate or revenue or other officer, and whether acting judicially, or in any proceeding preliminary to a judicial inquiry throughout the territories within or subject to the Presidency of Bombay.

Service of process on Company.

23. All services of mesne or other process, and all notices whatsoever, which by law or by the practice of any Court wherein the said Company shall sue or be sued, are required to be made, served or given for any purpose whatsoever to the said Company, shall and may be made, served and given, in addition to all ways and means by which the same may otherwise be legally made, served and given, by leaving the same addressed to the managing agent of the said Company at the office in Bombay of the said Company.

Recovery of penalties, etc.

24. Any penalties and forfeitures imposed by this Act, and any damages and expenses the recovery of which is not hereinbefore specially provided for, may respectively be recovered to the amount of fifty rupees by summary proceeding before a Magistrate.

Levy by distress.

25. All penalties, forfeitures, damages and expenses adjudged due under this Act, if the amount be not otherwise paid, may be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the surplus arising

[1] The words "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), Schedule B. This Schedule has been printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

[2] These words were substituted for the original words by Bom. 17 of 1945, s. 9, Sch. E, read with Bom. 52 of 1947, s. 2, proviso.

from such goods and chattels, after satisfying such amount and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained, or instead of proceeding by distress and sale, or in case of failure to realise by distress the whole or any part of any penalties, forfeitures, damages or expenses imposed or incurred under the provisions of this Act, the person claiming such penalty, forfeiture, damage or expenses may sue the person liable to pay the same in any court of competent jurisdiction.

No distress unlawful for want of form, etc.

26. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceeding relating thereto, nor shall any such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

Power to extend Act to other places and Companies.

27. It shall be lawful for the [1][Provincial Government], by an order to be published in the [2][Official Gazette], to extend the provisions of this Act to any other town or place within or subject to the Presidency of Bombay, and also to any other Joint Stock Company which may hereafter be formed for the purpose of manufacturing and supplying gas and which may have been completely registered according to law.

Interpretation.

28. The following words and expressions used in this Act shall have meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say)—

[3] * * * * * * * * * *

The word "street" shall include any public passage or place, and any road, square, court, alley, highway, lane, gully or passage, whether a thoroughfare or not, over which the public have a right of way, and also the roadway over any public or railway-bridge or causeway, and over the approaches thereto

[4] * * * * * * * * * *

[5] * * * * * * * * * *

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[1] The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation of Indian Laws Order in Council.

[2] The words "Official Gazette" were substituted for the words "Bombay Government Gazette", *ibid.*

[3] The words "Words importing the singular number only shall include the plural numbers and words importing the plural number only shall include also the singular number. Words importing the masculine gender shall include females" and the words "The words 'person' shall include a corporation whether aggregate or sole" were repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), Schedule B. This Schedule has been printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

[4] The words "The word 'Magistrate' shall include any Magistrate of Police and any Joint Magistrate or other person lawfully exercising the power of Magistrate acting at or for the place or district where the matter requiring the cognizance of any such Magistrate arises" were repealed, *ibid.*

[5] The portion beginning with the words "The expression" and ending with the words "or harbour" was deleted by Bom. 17 of 1945, s. 9, Sch. E, read with Bom. 52 of 1947, s. 2, proviso.